HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.4644 OF 2007

Between:

N. Thimmaiah and two others

…Petitioners

AND

The A.P Pollution Control Board, rep., by its
Environmental Engineer, Regional Office,
Near R & B Guest House, Subashnagar,
Nizamabad and two others

...Respondents

: O R D E R :

Counsel for the petitioners : Shri K. Venumadhav

8th March, 2007

Per G.S.SINGHVI, CJ

In this petition filed in the name of public interest litigation, the petitioners have prayed for issue of a mandamus to respondent Nos. 1 and 2 to order closure of the stone crusher being operated by respondent No. 3 near Gandhinagar residential colony, Kammarapally Village, Nizamabad District.

In the affidavit filed by him, petitioner No. 1 – Shri N. Thimmaiah has averred that respondent No.3 stone crusher has been established near National Highway No.16 and is at a distance of 500 square yards from Government Upper Primary School. He has further averred that the operation of the stone crusher is causing huge noise, air and water pollution and despite representations made by the residents of the area, the authorities of Andhra Pradesh Pollution Control Board (for short 'the Board') and Gram Panchayat, Kammarapally have not taken steps fro closure of the stone crusher.

We have heard Shri K. Venumadhav and perused the record. In our opinion, the writ petition does not deserve to be entertained, because the petitioners have failed to discharge the burden to prima facie establish violation of the provisions contained in the Environment Protection Act, 1986, Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act') and the Noise Pollution (Regulation and Control) Rules, 2000 which is sine qua non for invoking this Court's jurisdiction by filing petition pro bono publico. The petitioners have not indicated as to when the stone crusher was established and what is the magnitude of the pollution. They are also not shown to have represented to the Board for closure of the stone crusher run by

respondent No.3 by pointing out that the same is being operated without obtaining necessary consent in accordance with the provisions of the Water Act and the Air Act. It is not even their pleaded case that they had approached the District Collector for stopping the noise pollution being caused by operation of the stone crusher.

Learned counsel tried to convince us that tendering of copy of representation dated 19-2-2007 addressed to the Hon'ble Speaker of the Andhra Pradesh Legislative Assembly to some officer of the Board should be treated as sufficient compliance of the requirement of demand for justice, but we have not felt impressed. In our view, before invoking jurisdiction of this Court under Article 226 of the Constitution, the petitioners should have made a comprehensive representation to the Board and highlighted the adverse effect on the health of the people on account of operation of the stone crusher. They could have filed writ petition only if the concerned authorities of the Board failed to take appropriate action within a reasonable time.

With the above observation, the writ petition is dismissed leaving the petitioners free to represent to the Board and the Collector concerned for taking action against respondent No.3 by showing that the stone crusher is being operated without the necessary consent or that the operation of the stone crusher is causing pollution. If the representation of the petitioners is not considered and acted upon within reasonable time, they shall be free to file fresh petition.

As a sequel to dismissal of the writ petition, WPMP No. 5934 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

8th March, 2007
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